

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 2

Mtg. Date August 2, 2016

Dept. Development Services Department

Item Title: **Authorization for Placement of Property Liens**

Staff Contact: Paolo Romero, Code Enforcement Officer

Recommendation:

- 1) Open the continued cost confirmation hearing regarding code enforcement property liens,
- 2) Close the cost confirmation hearing, and
- 3) Adopt resolutions (**Attachments B**, and **C**) approving the placement of property liens on 7441 Broadway and 7439 Broadway.

Item Summary:

The City of Lemon Grove Municipal Code (LGMC) Section 1.24.030 provides the authority to issue administrative citations for violations of the LGMC. Chapter 1.24 of the LGMC provides for escalating fines and late payment penalties for noncompliance and eventually, property liens. The purpose of a lien is to recover the civil fines and late payment and interest penalties after a person fails to pay fines within the thirty day time limit. The County of San Diego Tax Assessor requires liens be filed no later than August 10th every year in order to complete the tax rolls. This item is continued from the July 19, 2016 City Council meeting and, staff is recommending two properties for property liens that have accumulated code enforcement fines and late payment penalty charges in amounts exceeding \$2,000 and the properties remain in violation. The properties are located at 7441 Broadway and 7439 Broadway. The staff report (**Attachment A**) describes the violations and provides a summary of events.

Fiscal Impact:

If the liens are approved and recorded, the City may receive up to \$442,425.75 in recovered fines and penalties as a part of the future sale of the property.

Environmental Review:

☒ Not subject to review

☐ Negative Declaration

☐ Categorical Exemption, Section

☐ Mitigated Negative Declaration

Public Information:

☐ None

☐ Newsletter article

☒ Notice to property owners

☒ Properties Posted on July 21, 2016

☐ Neighborhood meeting

Attachments:

A. Staff Report

B. Lien Resolution – 7441 Broadway

C. Lien Resolution – 7439 Broadway

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 2

Mtg. Date August 2, 2016

Item Title: **Authorization for Placement of Property Liens**

Staff Contact: Paolo Romero, Code Enforcement Officer

Discussion:

The City of Lemon Grove Municipal Code (LGMC) Section 1.24.030 provides the authority to issue administrative citations for violations of the City municipal code. The LGMC provides for escalating fines and late payment penalties for noncompliance. This item is continued from the July 19, 2016 City Council meeting and, staff recommends two properties for lien consideration that have accumulated code enforcement fines and late payment penalty charges in amounts exceeding \$2,000 (recommended minimum amount for code enforcement property lien consideration). The properties are located at 7441 Broadway and 7439 Broadway. Fines issued after June 23, 2016 are not included in this Lien Report in order to allow for payment of those fines within the 30 day time limit. The violations are described below.

7441 Broadway

Staff initiated this code enforcement case on July 23, 2015, after receiving complaints from residents and neighboring businesses. The subsequent inspection of the property confirmed a non-permitted Medical Marijuana Dispensary (MMD) operating at 7441 Broadway called "Elevated Times". Since the MMD included violations related to non-permitted construction, operating without a business license, and a prohibited use in the zone, the MMD is violating Title 15 including the 2013 CA Building Code Chapter 1 Section 5-(Permits) and the Uniform Administrative Code Chapter 3-(Permits and Inspections for non-permitted construction), LGMC Chapter 17.12-Zoning Violation, LGMC Chapter 17.16-Zoning Violation and LGMC Section 5.04.030-Business Permits in General. Staff issued up to 202 daily fines and citations for the violations. Staff was able to work with the property owner to remove the MMD on March 25, 2016. At that time, the property owner signed a settlement agreement with the City to reimburse attorney costs and agreed to not allow another MMD to operate on the property. Per the agreement, the City agreed to stay the code enforcement fines issued with the contingency that a new MMD is not allowed on the property.

On May 2, 2016, staff received information from residents and neighboring businesses that another MMD had moved into 7441 Broadway. Staff investigated and confirmed the operation of a MMD called "The Grove Collective". This MMD is violating LGMC Chapter 17.12-Zoning Violation, LGMC Chapter 17.16-Zoning Violation, LGMC Chapter 17.16-Non-Permitted Business Use in a Commercial Zone and LGMC Section 5.04.030-Business Permits in General. Staff is issuing daily fines and citations for the violations. The property remains in violation with the MMD continuing to operate. Due to the property owner's breach of the signed settlement agreement, staff is requesting approval to place a lien on the property for all fines issued and late payment penalties for both MMDs at 7441 Broadway totaling \$325,524.66. There have been 249 fines issued between July 23, 2015 and June 23, 2016. The total amount of fines (minus \$3,800 in paid fines) equates to \$249,000.00 with \$62,250.00 in 25 percent late payment penalties and \$14,274.66 in 10 percent annual interest penalties.

Attachment A

7439 Broadway

Staff initiated this code enforcement case on January 7, 2016, after receiving complaints from residents and neighboring businesses. The subsequent inspection confirmed a non-permitted MMD conducting business at 7439 Broadway called "The Top Shop". Staff would like to note that the property owner for this address is the same property owner as 7441 Broadway (different suites). Since the MMD included non-permitted construction, was operating without a business license, and is not a permissible use in the zone, the MMD is violating Title 15 including the 2013 CA Building Code Chapter 1 Section 5 (Permits) and the Uniform Administrative Code Chapter 3 (Permits and Inspections for non-permitted construction), LGMC Chapter 17.12-Zoning Violation, LGMC Chapter 17.16-Zoning Violation and LGMC Section 5.04.030-Business Permits in General. Staff issued daily fines and citations for the violations. In the first week of March 2016, "The Top Shop" discontinued operation and moved out of 7439 Broadway. A burglary had taken place at the dispensary that was part of the reason for the MMD ceasing operation. After the MMD moved out, staff worked with the property owner to remove all non-permitted construction to bring the property back into compliance. The property owner also signed a settlement agreement with the City to reimburse attorney costs and agreed to not allow another MMD to operate on the property. Per the agreement, the City agreed to stay the code enforcement fines issued.

On May 12, 2016, staff received complaints from residents that another MMD moved into 7439 Broadway. The subsequent inspection confirmed a non-permitted MMD conducting business at 7439 Broadway called "Lemon Greens Holistic Collective". The MMD at 7439 Broadway is violating LGMC Chapter 17.12-Zoning Violation, LGMC Chapter 17.16-Zoning Violation and LGMC Section 5.04.030-Business Permits in General. Staff is issuing daily fines and citations for the violations. The property remains in violation with the MMD continuing to operate. Due to the property owner's breach of the signed settlement agreement, staff is requesting approval to place a lien on the property for all fines issued and late payment penalties for the MMDs at 7439 Broadway totaling \$116,901.10. There have been 98 fines issued between January 7, 2016 and June 23, 2016. The total amount of fines equates to \$91,400.00 with \$22,850.00 in 25 percent late payment penalties and \$2,651.10 in 10% annual interest penalties.

City Attorney Actions

Deputy City Attorney Kristen Steinke has tried to work with the attorney representing the property owner for 7441 Broadway and 7439 Broadway. At this time, there is no resolution. The City understands that the property owner is actively trying to remove the dispensaries. However, the evictions will not resolve the breach of contract carried out by the property owner. If the City Council approves the liens for the subject properties, the City will abandon its breach of contract lawsuit against the property owner.

Public Information

Notices of the cost confirmation hearing were mailed to the subject property owners and posted on the identified properties on July 21, 2016.

Attachment A

Conclusion:

Staff recommends that the City Council:

1. Open the continued confirmation hearing regarding code enforcement property liens,
2. Close the cost confirmation hearing, and
3. Adopt resolutions (**Attachments B** and **C**) approving the placement of property tax liens on 7441 Broadway and 7439 Broadway.

RESOLUTION NO. 2016 –

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA APPROVING THE REPORT FOR THE PLACEMENT OF A PROPERTY LIEN AND ASSESSING THE COST OF FINES WITH LATE PENALTIES AND ANY COSTS ASSOCIATED WITH FINE RECOVERY AND EFFORTS TO ABATE THE VIOLATION AT 7441 BROADWAY PURSUANT TO THE CITY OF LEMON GROVE MUNICIPAL CODE CHAPTER 1.24

WHEREAS, the Code Enforcement Division of the Development Services Department works in partnership with residents and businesses of Lemon Grove to promote and maintain a safe and desirable living and working environment; and

WHEREAS, the City of Lemon Grove Municipal Code Section 1.24.030 provides the authority to issue administrative citations for violations of the City municipal code; and

WHEREAS, the purpose of the municipal code section is to encourage compliance with community standards by applying a monetary penalty for continuing violations; and

WHEREAS, the City follows the procedures for issuing citations and fines; and

WHEREAS, staff issues daily fines and citations for any non-permitted medical marijuana dispensary (MMD) conducting business in the City of Lemon Grove; and

WHEREAS, staff initiated this code enforcement case on July 23, 2015, after receiving complaints from residents and neighboring businesses. The subsequent inspection of the property confirmed a non-permitted MMD operating at 7441 Broadway called “Elevated Times”. Since the MMD included non-permitted construction, was operating without a business license, and is not a permissible use in the zone, the MMD is violating Title 15 including the 2013 CA Building Code Chapter 1 Section 5-(Permits) and the Uniform Administrative Code Chapter 3-(Permits and Inspections for non-permitted construction), LGMC Chapter 17.12-Zoning Violation, LGMC Chapter 17.16-Zoning Violation and LGMC Section 5.04.030-Business Permits in General; and

WHEREAS, the result of non-compliance has been the issuance of fines, penalties for non-payment, and the accrual of administrative costs for the property at 7441 Broadway; and

WHEREAS the fines and late payment penalties issued to the property owner of 7441 Broadway total \$325,524.66; and

WHEREAS, the City Council has reviewed the written report of said property lien proceedings and account of the cost thereof, as filed in the office of the City Clerk; and

WHEREAS, said report and account were duly set for hearing by the City Council for August 2, 2016, and notice of hearing was posted on the property and mailed to the property owner on July 21, 2016, and the City Council heard said matter on said date; and

WHEREAS, it is found and determined by the City Council that the report and account are true and correct and should be approved; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby:

1. Approves the staff lien report presented on August 2, 2016; and

Attachment B

2. Directs that the cost of code enforcement fines and penalties shall be hereby assessed as liens upon the property located at 7441 Broadway (APN: 480-084-31-00) as shown on the most recent available property assessment roll of the County of San Diego; and
3. Directs the City Clerk to send a certified copy of this resolution to the Tax Assessor's Office of the County of San Diego.

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RESOLUTION NO. 2016-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA APPROVING THE REPORT FOR THE PLACEMENT OF A PROPERTY LIEN AND ASSESSING THE COST OF FINES WITH LATE PENALTIES AND ANY COSTS ASSOCIATED WITH FINE RECOVERY AND EFFORTS TO ABATE THE VIOLATION AT 7439 BROADWAY PURSUANT TO THE CITY OF LEMON GROVE MUNICIPAL CODE CHAPTER 1.24

WHEREAS, the Code Enforcement Division of the Development Services Department works in partnership with the residents and businesses of Lemon Grove to promote and maintain a safe and desirable living and working environment; and

WHEREAS, the City of Lemon Grove Municipal Code Section 1.24.030 provides the authority to issue administrative citations for violations of the City municipal code; and

WHEREAS, the purpose of the municipal code section is to encourage compliance with community standards by applying a monetary penalty for continuing violations; and

WHEREAS, the City follows procedures for issuing citations and fines; and

WHEREAS staff issues daily fines and citations for any non-permitted medical marijuana dispensary (MMD) conducting business in the City of Lemon Grove; and

WHEREAS, staff initiated this code enforcement case on January 7, 2016, after receiving complaints from residents and neighboring businesses. The subsequent inspection confirmed a non-permitted MMD conducting business at 7439 Broadway called "The Top Shop". Since the MMD included non-permitted construction, was operating without a business license, and is not a permissible use in the zone, the MMD is violating Title 15 including the 2013 CA Building Code Chapter 1 Section 5 (Permits) and the Uniform Administrative Code Chapter 3 (Permits and Inspections for non-permitted construction), LGMC Chapter 17.12-Zoning Violation, LGMC Chapter 17.16-Zoning Violation and LGMC Section 5.04.030-Business Permits in General.; and

WHEREAS, the result of non-compliance has been the issuance of fines, penalties for non-payment, and the accrual of administrative costs for the property at 7439 Broadway; and

WHEREAS, the fines and late payment penalties issued to the property owner of 7439 Broadway total \$116,901.10; and

WHEREAS, the City Council has reviewed the written report of said property lien proceedings and account of the cost thereof, as filed in the office of the City Clerk; and

WHEREAS, said report and account were duly set for hearing by the City Council for August 2, 2016 and notice of hearing was posted on the property and mailed to the property owner on July 21, 2016, and the City Council heard said matter on said date; and

WHEREAS, it is found and determined by the City Council that the report and account are true and correct and should be approved; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby:

1. Approves the staff lien report presented on August 2, 2016; and
2. Directs that the cost of code enforcement fines and penalties shall be hereby assessed as liens upon the property located at 7439 Broadway (APN: 480-084-31-00) as shown

Attachment C

- on the most recent available property assessment roll of the County of San Diego; and
3. Directs the City Clerk to send a certified copy of this resolution to the Tax Assessor's Office of the County of San Diego.

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